Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

Coastal Petroleum Company,

Petitioner,

v.

Honorable Lawton Chiles, et al., as and Constituting the Board of Trustees of the Internal Improvement Trust Fund, and as and constituting the Executive Board of the Department of Natural Resources of the State of Florida,

Respondents.

Petition for Writ of Certiorari to the District Court of Appeal, First District, State of Florida

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Does the Takings Clause of the Fifth Amendment to the United States Constitution protect petitioner's long-term oil and gas royalty on sovereignty submerged lands from outright confiscation by Florida?

2) Whether Florida impairs its own contractual obligations in violation of Art. 1, § 10 of the United States Constitution by refusing to enter into leases on sovereignty lands thereby rendering petitioner's royalty worthless?

3) Does *Dolan v. City of Tigard*, 512 U.S. 374 (1994), require Florida to establish "rough proportionality" between its absolute restriction on drilling for oil and gas, and the environmental perils that it seeks to avert?

4) Has Florida denied petitioner its royalty without the due process of law required under the Fourteenth Amendment to the Constitution when it declared petitioner's royalty "speculative" and therefore worthless, without allowing petitioner a fair opportunity to introduce evidence of its value?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the First District Court of Appeal of Florida and Supreme Court of Florida, below.

Pursuant to Supreme Court Rule 29.6, Coastal Petroleum Company, as a corporate filer, hereby lists Coastal Caribbean Oils & Minerals, Ltd. as its parent company.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner Coastal Petroleum Company seeks review of the November 5, 1997, judgment and opinion of the First District Court of Appeal, State of Florida.

OPINIONS BELOW

The opinion of the First District Court of Appeal, State of Florida, is reported at 701 So. 2d 619 (Fla. 1st DCA 1997), and is reprinted in the Appendix to this Petition, p. 1. The unreported order of the Supreme Court

of Florida declining to exercise discretionary jurisdiction to review the First District Court of Appeal's decision was rendered on January 28, 1998, and is reprinted in the Appendix, p. 34. The August 5, 1996, opinion of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida after trial in case No. 90-3195, is unreported, but is reprinted in the Appendix, p. 13.

The prior July 23, 1995, opinion of the First District Court of Appeal, State of Florida reversing summary judgment is reported at 656 So. 2d 284 (Fla. 1st DCA 1995), and is reprinted in the Appendix, p. 35. The September 9, 1993, opinion of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida granting summary judgment in Case No. 90-3195 is unreported, but is reprinted in the Appendix, p. 38.

STATEMENT OF JURISDICTION

Petitioner seeks review from the November 5, 1997, judgment and opinion of the First District Court of Appeal, State of Florida. Petitioner timely sought to invoke the discretionary jurisdiction of the Supreme Court of Florida. That Court declined to exercise its discretionary jurisdiction on January 28, 1998. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a). This Petition is timely filed.

CONSTITUTIONAL PROVISIONS INVOLVED

". . . [N]or shall private property be taken for public use, without just compensation." Fifth Amendment, United States Constitution.

". . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .."

Section 1, Fourteenth Amendment, United States Constitution.

"No State shall . . . pass any . . . Law Impairing the Obligation of Contracts . . .." Article 1, Section 10 United States Constitution.

STATEMENT OF THE CASE

This case addresses the right to protection under the Takings Clause of an oil and gas royalty created on January 6, 1976, by the final settlement of a lawsuit in United States District Court for the Southern District of Florida, between Coastal Petroleum Company and the State of Florida.

The origins of this dispute date back to December 27, 1944, and March 27, 1946, when Coastal Petroleum Company purchased Florida oil and gas Drilling Leases Nos. 224-A and 224-B from the State of Florida. Coastal Petroleum Company's (Coastal) Leases covered about 4,000,000 acres of State of Florida offshore sovereign lands. The leased properties ran from the shoreline to 10.36 miles offshore, and from just west of Apalachicola, along the Gulf Coast, to just south of Naples. (Map at App., p. 55). Under the Leases, Coastal had the exclusive right to explore for and produce oil and gas from the offshore lands for so long as Coastal met the drilling requirements and paid annual rentals or royalties. In return, the State received monetary compensation at the time the Leases were entered, required Coastal to pay annual rentals, and reserved a 1/8th royalty for itself, entitling the State to one barrel of oil out of every eight barrels produced, with no deduction for the costs of that production. The State of Florida also affirmed in the

Leases, that each leasehold conveyance was in the State's "best interest."

In *Watson v. Holland*, 20 So. 2d 388 (Fla. 1945), Florida's Attorney General challenged both Leases, but that challenge was rejected and the Leases held valid by the Florida Supreme Court. The Court in *Watson* also held that oil and gas drilling was not a nuisance. Thereafter Coastal and its partners began exploring Coastal's leasehold properties and by 1968 had spent more than $16,000,000. A total of eleven non-producing offshore wells were drilled by Coastal and its partners on the more than four million acres covered by the Leases. In 1968 the State again challenged the validity of these Leases, this time in United States district court in Miami, Florida. That court too upheld the validity of the Leases. On January 6, 1976, while the State's appeal was pending in the Court of Appeals for the Fifth Circuit, Coastal and the State of Florida agreed to a settlement that was made part of the consent decree of the federal court. (Settlement at App., p. 46).

The Settlement divided the 10.36 mile coastal strip into three lengthwise bands. (See map at App., p. 55) In the inner 4.36 mile strip (aqua in color on the map at App., p. 55), covering more than 2,100,000 acres, Coastal's original leasehold interest was converted to a 1/16th royalty, which gives Coastal 6.25 percent of any leasehold production without any deduction for the costs associated with finding and producing the oil or gas. That royalty was worth roughly half the value of Coastal's original leasehold interest.[1] The remainder of the Settlement divided the outer six mile band of the original Coastal Leases into two equal

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[1] The calculation is as follows: the costs of production usually equal 3/4ths of the revenues received. A 1/8th royalty to the owner therefore leaves a 1/8th profit to the operating party.

three mile strips. The band running from 4.36 miles to 7.36 miles was returned to the State free and clear of all leasehold interests. The band running from 7.36 to 10.36 miles (blue in color on the map at App., p. 55) continued to be subject to Coastal's original leasehold interest, the State retaining its 1/8th royalty. Coastal also agreed that its royalty and leasehold interests only covered wells that started production within 40 years, or before 2016. During the 1968 to 1990 period, no oil and gas leases were executed on Coastal's royalty lands. However, in the late 1980's, after a natural gas discovery by Chevron off the Florida coast, Coastal sought seismic exploration permits from the State in order to further explore its lease areas at new horizons. The State granted such a permit to Coastal in 1990.

At the same 1990 meeting at which the permit was granted, the Florida land trustees adopted a general policy prohibiting drilling on offshore sovereign lands, including those covered by Coastal's leasehold and royalty. Later that year, the Florida Legislature codified that policy in Chapter 90-72, Laws of Florida, after noting that the increased interest by the oil and gas industry in exploring the outer continental shelf off the Florida Coast could pose environmental risks to Florida's Coastal waters. (App., at p. 56). The State offered Coastal no compensation for the royalty provided by the federal court settlement.

On July 23, 1990, Coastal filed a complaint for inverse condemnation against the State of Florida, claiming that the policy of the Florida land trustees and Chapter 90-72:

> . . . are an expropriation, confiscation and taking of Plaintiff's property, . . . without full compensation contrary to Article X, section 6(a) of the Florida

> Constitution . . . and, Article V and the Fourteenth Amendment to the Constitution of the United States which provides that property may not be taken without just compensation.

(Complaint of Inverse Condemnation, p. 8). Coastal claimed that the prohibition against new leases on the offshore sovereign lands totally destroyed its 1/16th royalty by precluding all leasing and drilling on the royalty property. The State moved for summary judgment on the ground that the public trust doctrine, added in 1970 to the Florida Constitution, Art. X, § 11, precluded Coastal's Fifth Amendment takings challenge.

Procedurally, both sides agreed to a bifurcated, non-jury trial confined solely to the issue of whether a "taking" of the royalty had occurred; only if that question was answered affirmatively would a jury be asked to resolve all valuation questions. The Florida Circuit Court then rejected Coastal's constitutional claims and granted the State summary judgment on the ground that its actions did not take Coastal's royalty. (App., at p. 38). On appeal that decision was reversed and remanded for trial. *Coastal Petroleum Co. v. Chiles*, 656 So. 2d 284 (Fla. 1st DCA 1995). (App., at p. 35).

On remand, a trial was held from May 6-10, 1996. In that non-jury bifurcated trial, the sole issue was whether the State of Florida had taken Coastal's royalty by passing Chapter 90-72, Laws of Florida. Neither side, however, presented any evidence of the royalty's actual value in 1990. Only the legal status, not the actual value, of the royalty had been placed in issue.

At the conclusion of the trial, the Circuit Judge held that the royalty had no value and therefore was not

constitutionally protected (i) because the State was under no duty to lease the covered lands, and (ii) because in light of the eleven nonproducing wells drilled on the 4,000,000 acres, the lack of leases executed from 1976-1990, and the public trust doctrine, the royalty's value was too speculative. (App., at p. 13). That decision was affirmed in the Florida First District Court of Appeal (App., at p. 1), despite Coastal's argument that this Court's recent decision in *United States v. Winstar Corp.*, 518 U.S. 839, 116 Sup. Ct. 2432 (1996), dealing with a "[f]ederal contract not even subject to the Contracts Clause," held that "a government cannot be permitted to nullify contractual rights by regulation or legislation," and required Florida to compensate Coastal for its royalty. (Coastal's Reply Brief to the First District Court of Appeal (1996) p.6).

Coastal filed a notice to invoke discretionary review in the Supreme Court of Florida. On January 28, 1998, that Court declined to exercise its discretionary jurisdiction.

REASONS FOR GRANTING WRIT

THE DECISION BELOW, BY FAILING TO PROTECT THE PROPERTY INTEREST CREATED BY THE ROYALTY CONVEYED BY THE STATE, CONFLICTS WITH THIS COURT'S TAKINGS CLAUSE JURISPRUDENCE AND PRESENTS AN IMPORTANT CONTRACT CLAUSE QUESTION NEVER ADDRESSED BY THIS COURT.

A. A Royalty Is a Protected Interest in Real Property under Florida Law. This Court has repeatedly been mindful

> . . . of the basic axiom that "'[property] interests . . . are not created by the Constitution. Rather, they

> are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.'" *Webb's Fabulous Pharmacies Inc. v. Beckwith*, 449 U.S. 155, 161 (1980), quoting *Board of Regents v Roth*, 408 U.S. 564, 577 [1972].

Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1001 (1984).

In Florida, as elsewhere, royalties are uniformly recognized and protected as interests in real property. *Conway Land, Inc. v. Terry*, 542 So. 2d 362 (Fla. 1989), stated clearly "the interest was a presently vested interest in real property as it applied to unsevered oil, gas or minerals." *Id.* at 363.

> The appellee's estate was doubtless speculative in value, . . . [given] the possibility that there may in fact be no oil and gas within the land. In short, the typical contingent remainderman has an uncertain interest in the fee simple, while these appellees have a fee simple interest in the uncertain.

Conway, 542 So. 2d at 365. *See also Miller v. Carr*, 188 So. 103 (Fla. 1939). *See also* Richard W. Hemingway, *Law of Oil and Gas*, 57-59 (3d Ed. 1991).

B. Petitioner's Royalty Has Been Taken by Florida's Refusal to Lease the Covered Property. By refusing to permit any leases or drilling in the waters covered by the royalty, the State has deprived Coastal of the only viable economic use of its property. That action clearly implicates the takings clause no matter whether Florida's action is classified as a physical or regulatory taking. See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992). ("when the owner of real

property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.") In this instance, Florida's legislative refusal to accept any leasehold applications requires Coastal to sacrifice all of its economically beneficial uses, its royalty, for the common good.

Lucas began with the proposition that the value in property necessarily inhered in its productive use by the owner. Take all that value, and it is as though the property was gone. Indeed, compensation is required whether this situation is described as a regulatory taking or a possessory taking. Treated as a regulatory taking, the taking is total. Florida's legislative refusal to accept any leasehold applications is tantamount to retaking for itself the entire royalty without compensation. If regarded as a possessory taking, *Loretto v. TelePrompter*, 458 U.S. 419 (1982), makes clear that the permanent physical occupation of any portion of land constituted a taking no matter how much was left over. This case does not require the Court to choose between regulatory or possessory takings. Either way, compensation is required.

C. Florida's Refusal to Lease the Covered Property Impairs Its Obligation of Contract. In *West River Bridge Co. v. Dix*, 47 U.S. (6 How.) 507 (1848), Vermont had conveyed by corporate charter the indefeasible right to build a bridge over the West River. When the State changed its mind, it was allowed to revoke the charter, but had to pay compensation for the losses so inflicted. The normal deference to state action is misplaced when the state is a party with a proprietary interest in the outcome. *See also, United States Trust Co. v. New Jersey*, 431 U.S. 1, 25-26 (1977), refusing to show deference to state actors

when New Jersey and New York sought to unilaterally abrogate their bond covenants to their own advantage.

The proper meaning of these cases has been clarified in *United States v. Winstar Corp.*, 518 U.S. 839, 116 Sup. Ct. 2432 (1996), which also refused to allow the United States to go back on its promise to count "supervisory good will" toward a bank's reserve requirements, thereby shutting it down. This Court noted "even though banking is one of the longest regulated and most closely supervised of public callings," the United States had to answer in damages when its shift in regulatory policy under FIRREA breached its contractual obligations. *Id.* 116 Sup. Ct. at 2440.

The Court relied heavily on contract clause cases, including *West River Bridge*, 116 Sup. Ct. at 2454, and *United States Trust*, 116 Sup. Ct. at 2466, n. 41, noting that "a stricter level of scrutiny applies under the Contract Clause when a State alters its own contractual obligations." The Court stressed

> . . . that allowing the Government to avoid contractual liability merely by passing any 'regulatory statute,' would flaunt the general principal that, 'when the United States enters into contract relations, its rights and duties therein are governed by the law applicable to contracts between private individuals.' *Lynch v. United States*, 292 U.S. [571] at 579.

Id. at 2473 (Breyer concurring).

Florida law unambiguously recognizes the owner's duty to make good faith efforts to lease royalty lands. Florida seeks to avoid this conclusion by claiming that its

refusal to entertain lease applications lies within its exclusive prerogative because nothing in the 1976 royalty agreement explicitly requires it to lease out the property to interested parties. As the Circuit Judge wrote: "If the parties had intended to bind the State to a condition that the land must be leased to an interested and qualified lessee, then certainly they could have included such a provision in the agreement." (App., at 18).

Yet most emphatically this is not the law in Florida, nor it appears anywhere else. The authoritative Florida decision on an owner's obligation to lease land for the benefit of the royalty interest is *Welles v. Berry*, 434 So. 2d 982 (Fla. 2d DCA 1983), which followed the general law that imposes on owners a good faith duty to lease the property covered by the royalty.

> "In all jurisdictions with expressions on the subject, with the possible exception of Louisiana, it has been held or assumed that the holder of the exclusive leasing power owes a duty to the owners of interest subject to such power . . ."
>
> Terminable or defeasible nonparticipating royalty interests are especially vulnerable to deliberate dilatory tactics of the executive to postpone actual production until after the terminal date of the interest.

Id. at 985, (quoting 1 E. Kuntz, *The Law of Oil and Gas* § 15.7, at 351 (1962)). *Welles* also cited: 2 H. Williams and C. Meyers, *Oil and Gas Law*, § 339.2 (1981). *See also* Merrill, *Implied Covenants Between Others Than Lessors and Lessees*, 27 Wash. U. L. Rev. 155 (1942).

The State Circuit Court sought to distinguish the State's contractual duties:

> . . . the obligation of the State cannot be compared to the obligation of a private party. . . . The State's interest here is not merely economic. [Rather] that policy was adopted to protect the environment, not to prevent Coastal from reaping a contingent profit."

(App., at p. 20). That reasoning was adopted in the District Court on Appeal: "the state, unlike private property owners, is not necessarily holding land in order to obtain an economic benefit." (App., at pp. 8-9).

Those conclusions completely contradict the prohibition of *United States Trust, supra*, that requires lesser deference when the State seeks to evade its own contractual obligations. Second, the doctrine of utmost good faith has been routinely applied to public owners as well as private owners. See, Hemingway, *Oil and Gas*, *supra*, at § 2.2 n. 54. Indeed *Welles* itself noted that the "case most often cited for the imposition of a covenant to use diligence in obtaining leases is *Federal Land Bank v. United States*, 168 F. Supp. 788 (Ct. Cl. 1958)," where the United States was the named defendant. *Welles*, at 986. *See also Mafrige v. United States*, 893 F. Supp. 691, 703 (S.D. Tex. 1995).

Third, there is no principled reason to depart from a rule that enjoys universal recognition on both private and public lands. The conflicts of interest identified above remain for both public and private owners. It is simply false to say that owners of private lands have only economic motivations at heart in deciding whether or not to enter drilling leases. The Florida courts have opportunistically reinvented the law concerning royalties to strip the petitioner of its vested rights.

Nor, finally, can the State of Florida hide its intransigent refusal to entertain drilling on the royalty lands behind the mantle of environmental protection. Environmental issues were already front and foremost when the State settled its dispute with Coastal in 1976. The State could have, but did not, choose to buy out Coastal's interest at that time. Furthermore, the State has a magnitude of restrictions on oil and gas drilling to protect the environment, as is evident in the recent decision of the Division of Administrative Hearings in *Florida Wildlife Federation v. Department of Environmental Protection and Coastal Petroleum Co.*, Division of Administrative Hearings, Case Nos. 96-4222, 96-5038, 97-4362, 97-4591. (App., at p. 62).[2]

The obligation of utmost good faith does not require the State to surrender its legitimate environmental concerns, but it does preclude the utter refusal to deal articulated in Chapter 90-72, just as it precludes the power of the State to sit and indulge in "extraordinary delay" in acting on a mining permit application, which was recently held to constitute a taking when the delay rendered plaintiff's leasehold interests valueless. *Eastern Minerals*

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[2] In one breath the State insists that there is no oil to be found on the lease or royalty property. In the next breath it seeks to impose sureties of first $500 million, then $1.9 billion, and finally $4.25 billion to cover the costs of clean up of some hypothetical million barrel spill and natural resource damage. The Recommended amount of the surety was reduced to just under $225,000,000. (App. at p. 142). By way of comparison the worst domestic oil spill, at Santa Barbara in 1972, involved the release of 77,000 barrels. *See*, Leigh Derenne Braslow, *Coastal Petroleum's Fight to Drill Off Florida's Gulf Coast*, 12 J. Land Use & Envtl. Law, 343, 345-347 (1997). Federal regulations call for a maximum surety of $35 million. To date, from all the drilling from all federal sites in the Gulf, only 1000 barrels of oil have leaked into the environment, compared with 69,000 barrels released from 7 tanker spills in 1995 alone. *Federal Offshore Statistics*, OCS Report MMS 97-0007, Oil Pollution in U.S. and International Waters at 93 (1995).

International, Inc. v. United States, 36 Fed. Cl. 541, 549 (1996). Surely Florida is in no better position when it abandons subterfuge and flat-out refuses to enter into any leases on royalty lands.

D. The Decision Below Conflicts With The *Dolan* "Rough Proportionality" Test. The decision of this Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), makes clear the constitutional dimensions of this issue under the takings clause: Florida must show at least some "rough proportionality" between the ends it seeks and the restrictions it imposes. This Court has already granted a writ of certiorari in the *De Monte Dunes at Monteray, Ltd. v. City of Monteray*, No. 94-16248, to explore the meaning of that requirement in a land use case, in which the Ninth Circuit found that excessive land use restrictions totally destroyed the development potential of respondent's parcel. The identical issues arise in this case because the State has not even attempted to make the appropriate accommodations.

Nor does the public trust doctrine contained in the Florida Constitution allow the State to destroy petitioner's vested royalty interest. Article X, § 11 of the Florida Constitution provides:

> Title to lands under navigable waters, within the boundaries of the State, which have not been alienated . . . is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest.

The Circuit Court held that this provision "prevents the state from entering into a non-repealable contract for the private use of sovereignty lands," and that "the state

must be left free to reevaluate, on a continuing basis, whether a previously allowed use of sovereign lands remains in the public's best interest." (App., at p. 23). Yet the public trust language cuts in exactly the opposite direction, for it expressly authorizes those conveyances which are deemed in the public interest. The public trust doctrine does not preclude conveyances of fee interests in sovereignty lands. See *Askew v. Gables-by-the-Sea, Inc.*, 333 So. 2d 56 (Fla. 1st DCA 1976), *Zabel v. Pinellas County Water & Navigation Control Auth.*, 171 So. 2d 376 (Fla. 1965). Nor does it preclude the creation of a royalty that the State found to be in the public interest. The State of Florida made that determination when it first issued the underlying leases in the 1940s and when the royalty was created in the 1976 Memorandum of Settlement.

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992) this Court wrote that:

> In the case of land, however, we think the notion pressed by the Council that title is somehow held subject to the 'implied limitation' that the State may subsequently eliminate all economically viable use is inconsistent with the historical compact recorded in the Takings Clause that has become part of our constitutional culture.

The same constitutional culture requires the protection of royalties from state machinations directed toward their destruction.

Petitioner's claim for compensation is not barred by *Marine One, Inc. v Manatee County*, 877 F.2d 892 (11th Cir. 1989), *as modified*, 898 F.2d 1490 (11th Cir. 1990). In that case the state was allowed to revoke a marine construction permit over public waters without paying

compensation on the ground that it was an impediment to navigation in public waters. But that case dealt only with a regulatory permit, and did not purport to invalidate a protected interest in real property, such as the royalty involved here.

Finally, Florida's actions have destroyed Coastal's "investment-backed expectations." *See Penn Central Corp. v. City of New York*, 438 U.S. 104, 124 (1978); *Ruckelshaus v. Monsanto*, 467 U.S. at 1005. The original leasehold agreement, and the 1976 Settlement were ordinary bilateral contracts, supported by consideration and fully enforceable as executory agreements. The settlement explicitly contemplated a 40-year base period for the royalty obligation, which petitioner could, and did, keep fully alive by making specified annual rental payments pocketed by the State. Within this institutional context, it would be the height of folly to protect the petitioner's interest only if it fomented other parties to demand leases or did so itself. The whole point of the 1976 agreement was to stabilize the expectations of both Florida and Coastal with respect to their future dealings. It is dangerous to now allow the State to unilaterally eliminate its obligations under the agreement without compensation for the property interest it thereby destroys. Looking backward, it allows the State to destroy the royalty. Going forward that position senselessly blocks the State from entering into binding bilateral executory contracts. Parties that have paid for their legal interests have, and should have, a reasonable expectation that these will receive constitutional protection.

E. Lower Courts Cannot Declare Interests In Real Property Worthless Without Allowing Their Holders An Opportunity To Present Evidence On Their Own Behalf. Finally, the decision of the Court below cannot be supported on the audacious ground that the royalty has been

shown to be worthless, by purporting to find that Coastal's royalty was worthless in light of the past historical record that showed unsuccessful drilling in the royalty lands before 1968 and the economic inactivity in them thereafter. (App., at p. 13). Petitioner recognizes that the State could make just this argument at the second phase of trial. But by the same token, elementary considerations of due process should have allowed it to offer evidence on the valuation issue before that issue was decided.

The difficulties in valuating a speculative interest do not allow the State to treat them as worthless under the Fifth Amendment to the Constitution. On this question, it is clear that while state law defines the definition of the property interest, "the quantum and method of proving just compensation is a federal question and is governed entirely by federal law." *United States v. 4.553 Acres of Land*, 208 F. Supp. 127 (N.D. Cal. 1962). Federal law uniformly rejects the proposition that the speculative value of unproved royalty and leasehold interests bars any constitutional claim for just compensation. Thus in speaking about the difficulties of valuation in condemning a mining claim, Justice Brewer observed, "uncertain and speculative as it is, such prospect has a market value, and the absence of certainty is not a matter which the railroad company [in its role as condemnor] can take advantage when it seeks to enforce a sale." *Montana Railway Company v. Warren*, 137 U.S. 348 (1890).

That rule has been consistently applied in subsequent federal cases. *See*, e.g., *United States v. Silver Queen Mining Co.*, 285 F.2d 506, 510 (10th Cir. 1960) ("Some speculation is inherent in the ascertainment of value of all resource property, be it mineral, oil, gas or otherwise, and if the quality of proof of value follows the

custom of the industry, is the best available, and is sufficient to allow the jury or court to make an informed estimate as to the fact of value, such proof is sufficient to meet the burden."); *see also Phillips v. United States*, 243 F.2d 1, 5 (9th Cir. 1957). ("The 'Element of Speculation' in Mineral Right Does Not Preclude their Having an Ascertainable Value."). These particular decisions follow inexorably from basic principles that this Court has long followed in the field.

> The guiding principle of just compensation is the reimbursement to the owner for the property interest taken. "He is entitled to be put in as good a position pecuniarily as if the property had not been taken. He must be made whole but is not entitled to more."

Olson v. United States, 292 U.S. 246, 255 (1934). So long therefore as plaintiffs' royalty is subject to exchanges between willing buyers and willing sellers, then the State cannot pretend that the value of that interest is simply zero.

In light of these principles, it is useful to mention but some of the evidence that petitioner could introduce in a full trial to show the value of their royalty if allowed to do so. The authoritative Oil & Gas Journal reports that Coastal believes that extensive amounts of oil could be extracted from its royalty lands.[3] Elsewhere off the Florida coast the United States government paid oil companies substantial sums to drop claims to leases that were acquired from the federal government in environmentally sensitive areas. *See* Anne Reifenberg, *U.S. to Pay Oil Companies $200 Million*

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[3] "St. George Island prospect could hold 2.19 billion bbl in place. At 25% recovery, this would be a field of 618 million bbl ultimate recovery, requiring six platforms and 109 wells, Coastal said." Alan Petzet, *Coastal lists Smackover, Sunniland Objectives in Gulf Off Florida*, Oil & Gas J., Sept. 29, 1997, at 101.

To Drop Claims to Some Offshore Leases, The Wall Street J., Aug. 1, 1995. If leasehold claims could be worth millions, then why is Coastal's royalty dismissed as worthless? If Coastal's royalty is, apart from the State intransigence, worthless, then why has Coastal spent a small fortune to protect it? In the parallel proceeding concerning Coastal's offshore lease, Coastal introduced a team of credible experts to demonstrate the value of those properties. (App., at pp. 67-69). Such a showing could also be made at the valuation phase of this proceeding. This Court need not address any of these valuation questions to reverse the decision below. But it should order the Florida courts to recognize the constitutionally protected status of Petitioner's royalty and receive such valuation evidence before determining the royalty's actual value.

Petitioner has a protected real property royalty that Florida wishes to take without compensation. Florida justifies its actions by creating a separate law that allows it to destroy recognized property interests without compensation, and to repudiate its own grants in bad faith after the fact, and then offers before its own courts self-serving justifications for the destruction of these interests without compensation. The Fifth Amendment, Fourteenth Amendment and the Contracts Clause forbid Florida's effort.

CONCLUSION

Certiorari should be granted to review the judgment of the First District Court of Appeal, State of Florida in *Coastal Petroleum Company v. Honorable Lawton Chiles, et al.*, 701 So. 2d 619 (Fla. 1st DCA 1997).

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